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In the

Supreme Court of the United States

October Term, 1957

No. 634

A. MASCHMEIJER, JR., INC.,
Petitioner,

v.

EASTERN MOTOR EXPRESS, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION OF SOUTHERN TEXTILE CHEMICAL MANUFACTURERS' ASSOCIATION FOR LEAVE TO FILE BRIEF AS AN AMICUS CURIAE

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Of Counsel

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Southern Textile Chemical Manufacturers' Association, hereinafter sometimes called "Southern Textile", respectfully moves, in accordance with Paragraph 3 of Rule 42, for leave to file a brief as amicus curiae in support of the petition for writ of certiorari in the above entitled case.

Southern Textile is a non-profit association consisting of approximately thirty-three members who are engaged in the business of manufacturing and shipping various chem-

icals in barrels and drums in the southeastern states, particularly in the states of North Carolina and South Carolina. One of the primary objects of Southern Textile is to promote and protect the interests and rights of its members and to serve as a vehicle for common action to accomplish that purpose. The decision of the Court of Appeals in this case, in effect, makes shippers of liquid products in barrels and drums absoluately liable for any leakage, or damage resulting therefrom, due to any latent defect in the container notwithstanding the exercise of the highest degree of care on the part of the shipper, and substantially relieves carriers from the burden of proof formerly on them with respect to any negligence on their part in the handling of the shipments while in their possession.

Southern Textile is thus vitally interested in obtaining a review of this decision, the results of which, if it is not reversed, will be seriously detrimental to the business of its members.

This motion is being made because the respondent, through its counsel, has refused to consent to the filing of such a brief by Southern Textile.

By appearing as amicus curiae and participating in this matter, Southern Textile seeks to emphasize to the court the vital interest of its members and others similarly situated in the decision in question.

Facts and questions of law which Southern Textile desires to discuss in its brief include the following:

1. The tremendous potential impact of the decision in question on the particular businesses of the members of Southern Textile, who are required by circumstances to rely primarily on motor carrier transportation.

2. Whether the decision of the court below is contrary to the public interest in that:

(a) It inequitably shifts the obligation of proof from the carrier, who has the right to inspect the containers at the time it receives them, to the shipper, who has no means of knowing what happens to the containers after delivery to the carrier.

(b) It imposes an absolute liability and responsibility on the shipper, notwithstanding the fact that the shipper may have exercised not only reasonable care under the circumstances but even the highest degree of care possible.

Southern Textile thus seeks to show that its members, in addition to the other interested persons who are already participating, are vitally interested in the decision, and wishes to discuss in its brief matters of peculiar concern to its members which the movant believes have not been adequately treated elsewhere.

Respectfully submitted,

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Charlotte, North Carolina
Of Counsel

January 14, 1958

CERTIFICATE OF SERVICE

I, James B. Craighill, attorney for Southern Textile Chemical Manufacturers' Association, and member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of January, 1958, I served copies of the foregoing motion and of the accompanying Supporting Brief of said Association upon the several parties hereto, as follows:

1. On the Eastern Motor Express, Inc., by mailing a copy with air-mail postage prepaid to Bernard Axler (Zelby & Burstein), 135 Broadway, New York, N. Y.

2. On A. Maschmeijer, Jr., Inc., by mailing a copy with air-mail postage prepaid to Jerome G. Greenspan, 169 William Street, New York, N. Y.

3. On The National Barrel & Drum Association, Inc., by mailing a copy with air-mail postage prepaid to Morris Hershson, 200 West 57th Street, New York, N. Y.

4. On The Manufacturing Chemists' Association, Inc., by mailing a copy with air-mail postage prepaid to Nuel D. Belnap, One North LaSalle Street, Chicago 2, Illinois.

(s) JAMES B. CRAIGHILL